

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PENDLETON DIVISION

---

OREGON FIREARMS FEDERATION, )  
INC., et al., )  
Plaintiffs, ) Civil No.  
v. ) 2:22-cv-01815-IM  
Defendants. ) (Lead Case)  
(Continued) )  
TINA KOTEK, et al., ) Civil No.  
 ) 3:22-cv-01859-IM  
 ) (Trailing Case)  
 )  
 ) Civil No.  
 ) 3:22-cv-01862-IM  
 ) (Trailing Case)  
 )  
 ) Civil No.  
 ) 3:22-cv-01869-IM  
 ) (Trailing Case)  
)

---

\* VIDEOCONFERENCE \*

DEPOSITION UPON ORAL EXAMINATION

OF EXPERT

LUCY P. ALLEN

---

Witness located in:

New York, New York

\* All participants appeared via videoconference \*

DATE TAKEN: April 4, 2023  
REPORTED BY: Tia B. Reidt, Washington RPR, CCR #2798

Page 2

1 \_\_\_\_\_  
2 (continued) )  
3 MARK FITZ, et al., )  
4 Plaintiffs, )  
5 v. )  
6 ELLEN F. ROSENBLUM, et al., )  
7 Defendants. )  
8 \_\_\_\_\_ )  
9 KATERINA B. EYRE, et al., )  
10 Plaintiffs, )  
11 v. )  
12 ELLEN F. ROSENBLUM, et al., )  
13 Defendants. )  
14 \_\_\_\_\_ )  
15 DANIEL AZZOPARDI, et al., )  
16 Plaintiffs, )  
17 v. )  
18 ELLEN F. ROSENBLUM, et al., )  
19 Defendants. )  
20 \_\_\_\_\_  
21  
22  
23  
24  
25

Page 3

1 APPEARANCES

2 For the Eyre Plaintiffs:

3 SHAWN M. LINDSAY  
4 JURISLAW, LLP  
5 Three Centerpointe Drive, Suite 160  
Lake Oswego, OR 97035  
(503) 968-1475  
Shawn@jurislawyer.com

6 For the Defendants:

7 BRIAN S. MARSHALL  
8 OREGON DEPARTMENT OF JUSTICE  
9 TRIAL DIVISION  
10 SPECIAL LITIGATION UNIT  
100 SW Market Street  
Portland, OR 97201  
Brian.s.marshall@doj.state.or.us

11  
12 \* \* \* \* \*

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Page 4

## 1 EXAMINATION INDEX

2 EXAMINATION BY:	PAGE
3 Mr. Lindsay	5
4 Mr. Marshall	68

5

## 6 EXHIBIT INDEX

7 EXHIBIT	DESCRIPTION	PAGE
8 EXHIBIT 66	Curriculum Vitae of Lucy P. Allen.	7
9 EXHIBIT 67	Declaration of Lucy P. Allen in 10 Support of Defendants' Opposition to Plaintiffs Motion 11 For Preliminary Injunction.	10

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Page 33

1 it would perhaps be helpful in answering certain  
2 questions. That's what I would say.

3 Q. Turning to your declaration, paragraph 6.

4 Do you have that in front of you?

5 A. Yes.

6 Q. In paragraph 6 of your declaration, you state,  
7 open quote, "Plaintiffs claim that the large-capacity  
8 magazines (magazines capable of holding more than ten  
9 rounds; 'Large-Capacity Magazines' or 'LCMs') covered  
10 by Oregon's Ballot Measure 114 ('Measure 114') are  
11 commonly used for lawful purposes, including for  
12 self-defense." And I underlined "commonly used."

13 In paragraph 7 of your declaration, you state,  
14 open quote, "The number of rounds commonly needed by  
15 individuals to defend themselves cannot be practically  
16 or ethically determined with controlled scientific  
17 experiments. And there is no source that  
18 systematically tracks or maintains data on the number  
19 of rounds fired by individuals for self-defense."

20 In paragraph 7, you used "commonly used." I'm  
21 sorry. In paragraph 6, you used "commonly used." In  
22 paragraph 7, you used "commonly needed."

23 Please explain the difference between  
24 "commonly used" and "commonly needed," as you used  
25 those terms in your declaration.

Page 34

1           A. Well, one difference would be that someone  
2 might shoot 15 rounds, but the same outcome would have  
3 happened had they only shot eight rounds, for example.  
4 So they may have used 15 rounds, because they had  
5 access to 15 rounds, but the outcome would have been  
6 the same if they only had, you know, under ten rounds,  
7 for example.

8           So that would be an example where a  
9 large-capacity magazine might, in fact, have been used,  
10 but it wouldn't have been needed.

11           Q. What if -- let's use the difference between  
12 "commonly owned" and "commonly needed." What's the  
13 difference between "commonly owned" and "commonly  
14 needed"?

15           A. Well, owned is -- means something different  
16 than "used" or "needed."

17           Q. And --

18           A. I mean, something that's owned could never be  
19 used and also never be needed.

20           Q. Correct. I guess -- I guess I meant to say I  
21 understand.

22           Why do you make the distinction in your  
23 declaration in paragraph 6 and paragraph 7 between  
24 "commonly used" and "commonly needed"?

25           A. Why do I use two different words there?

Page 35

1           Q. Why do you distinct -- you used a distinction  
2        in paragraph 6 and paragraph 7. Paragraph 7, you used  
3        "commonly used for lawful purposes." Sorry.  
4        Paragraph 6, you say that. And paragraph 7, you say  
5        "commonly needed."

6           And my question is: Why do you distinguish  
7        between "commonly used" and "commonly needed" in your  
8        declaration?

9           A. I'm not sure I distinguished. I used two  
10      different words, and you asked me what the difference  
11      was in the meaning. I am using two different words  
12      there. I'm not particularly distinguishing between  
13      them, I don't think, in my declaration.

14          Q. Why is it important to know how many  
15      ammunition rounds are needed by people to defend  
16      themselves?

17          A. That's, I think, a public policy question.  
18      It's my understanding -- and I have read some -- now  
19      you're asking me a legal or a policy question.

20           But I think if it doesn't -- if large-capacity  
21      magazines are not actually needed, then from a public  
22      policy standpoint, if the outcomes are the same  
23      regardless of what you have, then it's hard to argue  
24      that it's important for self-defense or it's  
25      important -- it's important to outcomes.

Page 36

1           If the outcomes are the same and you could  
2 just as well -- it doesn't matter whether you have it.  
3 You have no need for it. Then I think, from a public  
4 policy standpoint, the supposed good outcomes from  
5 having large-capacity magazines are the same. Then  
6 that would argue there isn't need for them.

7           Q. Firearms and magazines that accept more than  
8 ten rounds are commonly owned by Americans; correct?

9           A. I don't -- I've not been asked to analyze  
10 that, nor do I have an opinion on that.

11          Q. Would you think that chainsaws are commonly  
12 owned by Americans?

13          A. I would have to know what you mean by  
14 "commonly owned," but I would say no.

15          Q. I'm trying to understand what your  
16 understanding of "commonly owned" is. That's why I'm  
17 asking.

18           Let's try it this way:

19           Are vehicles commonly owned by Americans?

20          A. I haven't come to any determination -- nor  
21 have I been asked to -- on whether something is  
22 commonly owned. So you're asking me about something  
23 that I don't have a professional opinion on, nor have I  
24 been asked to have one on that.

25          Q. I'm asking your personal opinion and your

Page 37

1 understanding of the term "commonly owned."

2 In your personal opinion, are vehicles  
3 commonly owned by Americans?

4 A. I think the term "commonly owned" depends on  
5 the context. I would agree that most people would say  
6 that vehicles are commonly owned by Americans.

7 Q. And what would make them commonly owned?

8 A. I think there's a lot of -- you know, the US  
9 is a pretty big state [sic]. There's a lot of open  
10 territory, and a lot of people commute to work and use  
11 cars. I think that's why they're commonly owned.

12 Q. If you knew that Americans owned more than 20  
13 million magazines that accepted more than ten rounds,  
14 would that, in your opinion, mean they're commonly  
15 owned?

16 A. No. It could be whatever.

17 Q. What about 50 million?

18 A. No. It depends on if -- whatever. If five  
19 people own the -- 80 percent of them, then it wouldn't  
20 be commonly owned. So it's not a number of the actual  
21 number of something that's out there.

22 Q. Okay.

23 Let's try percentage then.

24 If you knew that half of all magazines in  
25 America could accept more than ten rounds of

Page 38

1 ammunition, in your opinion, would that mean they're  
2 commonly owned?

3 A. No. That wouldn't be enough to say that  
4 unless you know the percent of the population that, in  
5 fact, owns magazines at all.

6 Q. Well, that's my hypothetical. Half.

7 50 percent.

8 A. I thought you said -- I thought you said half  
9 of the population owned -- that owned magazines had  
10 more than ten rounds, that half of the magazines were  
11 more than ten rounds.

12 Q. Let me rephrase, then, if that was not clear.

13 If you knew that half of all magazines in  
14 America could accept more than ten rounds of  
15 ammunition, would that mean they're commonly owned?

16 A. No. You could say that half of all ten-carat  
17 diamonds are white. It wouldn't mean that ten-carat  
18 diamonds are commonly owned. Right? That's not...

19 Q. Okay.

20 If you knew that half of all Americans owned  
21 magazines that could accept more than ten rounds of  
22 ammunition, would that mean they're commonly owned?

23 A. I guess I would say that if half of the people  
24 in the country do something, then I think you could say  
25 it's common. Something that's done by half of the

Page 39

1 people would -- I think one would argue is common.

2 Q. Do you agree or disagree that owning a firearm  
3 for self-defense is lawful?

4 A. It seems like there are -- it would certainly  
5 depend on the circumstances.

6 Q. Do you agree or disagree that large-capacity  
7 magazines, as you define it in your declaration, are in  
8 common use by Americans for self-defense?

9 A. I haven't seen any evidence that shows that,  
10 but...

11 Q. That shows that they're commonly owned?

12 A. Commonly used for self-defense.

13 Q. What about commonly owned?

14 A. I don't know. I don't know what the -- I have  
15 not analyzed how -- what is the actual number of  
16 large-capacity magazines or what percent of the  
17 population uses them. And I don't know -- or owns  
18 them.

19 MR. LINDSAY: We have been going for an  
20 hour, Brian. I'm fine continuing.

21 Ms. Allen, I'm fine continuing unless you want  
22 to take a break.

23 MR. MARSHALL: Can we ask the reporter as  
24 well?

25 THE COURT REPORTER: I could use five

Page 57

1 owned and used in America?

2 A. I'm sorry. When you were reading, I think it  
3 was -- I heard you say 65 percent. I think it's  
4 64 percent.

5 Q. You're correct. Thank you. 64 percent.

6 Would you like me to repeat my question, or  
7 did you -- are you in the process of answering that?

8 A. I think your question was: Given those two  
9 sentences -- well, go ahead. You can repeat your  
10 question.

11 Q. Considering your statement in paragraph 26 of  
12 the percentages involving large-capacity magazines, my  
13 question is: Could those numbers be because magazines  
14 that accept more than ten rounds of ammunition are  
15 commonly owned and used in America?

16 A. That would be contrary to what your expert,  
17 Dr. Kleck, says. What Dr. Kleck says is that mass  
18 shooters use large-capacity magazines because they are  
19 intending to inflict more lethality. So their desire  
20 to kill more people is the reason that they choose  
21 large-capacity magazines. And I wouldn't particularly  
22 disagree with your expert, Dr. Kleck, on that  
23 particular...

24 So the -- the mass shootings that involve  
25 large-capacity magazines do involve more fatalities and

Page 58

1       injuries than mass shootings when there is not a  
2       large-capacity magazine involved.

3           Q. But my question is:

4           So in paragraph 26, you say that 64 percent  
5       and 63 percent -- those are, in my opinion, higher  
6       because they're above 50 percent -- they involve  
7       large-capacity magazines. And my question is not about  
8       Professor Kleck.

9           My question is could those numbers be your  
10       numbers? Could your numbers be that amount because  
11       magazines that accept more than ten rounds of  
12       ammunition are commonly owned? Lots of people own  
13       them?

14           MR. MARSHALL: Objection. Asked and  
15       answered.

16           Go ahead.

17           THE WITNESS: I don't think that gives any  
18       evidence for that. I think, as your expert, Dr. Kleck,  
19       says, it is that mass shooters can be purchasing  
20       large-capacity magazines to -- because they desire to  
21       inflict more harm, more deaths and injuries.

22       BY MR. LINDSAY:

23           Q. In paragraph 27 of your declaration, you  
24       comment upon fatalities per mass shooting with ten-plus  
25       magazines or ten or fewer.

Page 64

1 shortly. I just have some follow-up questions here.

2 Ms. Allen, I really do appreciate you  
3 explaining your opinions today and being patient with  
4 me as I ask you questions.

5 I'm going to ask you questions about things  
6 that you may or may not have any opinions on. And it  
7 may be that other defense experts will discuss these  
8 topics.

9 Do you have an opinion as to whether  
10 Measure 114 prohibits the possession or use of weapons  
11 that were common -- in common use at the time of the  
12 2nd or 5th -- 14th Amendments were ratified?

13 A. I do not. I do not have --

14 Q. Do you have an opinion --

15 A. Yeah.

16 Q. Do you have an opinion as to whether  
17 Measure 114, as part of a historical tradition,  
18 delimits the outer bounds of the right to keep and bear  
19 arms?

20 A. No.

21 Q. Do you have an opinion as to whether  
22 Measure 114 addresses a general societal problem that  
23 has persisted since the 18th century?

24 A. I have -- I don't have an opinion. I've not  
25 been asked to look at that.

Page 65

1           Q. Do you have an opinion as to whether  
2 Measure 114 is similar to historical regulation  
3 addressing a societal problem that has persisted since  
4 the 18th century?

5           A. No.

6           Q. Do you have any opinions as to how Measure 114  
7 burdens a law-abiding citizen's right to armed  
8 self-defense?

9                           MR. MARSHALL: Objection. Calls for a  
10 legal conclusion.

11                  Go ahead.

12                  THE WITNESS: I don't believe so, unless  
13 something in my declaration speaks to that.

14 BY MR. LINDSAY:

15                  Q. And when you say you don't believe so, does  
16 that mean you don't believe you have an opinion? Or do  
17 you -- are you saying you don't believe that it  
18 burdens?

19                  A. Oh, I don't believe that I have an opinion  
20 other than what is -- what might be reflected in my  
21 declaration.

22                  Q. Do you have an opinion as to whether firearms  
23 with magazines that accept ten or more rounds of  
24 ammunition are in common use today?

25                  A. I have not been asked to analyze that, no.

Page 66

1           Q. Do you have an opinion as to whether firearms  
2 with magazines that carry more than ten rounds of  
3 ammunition are in common use for self-defense today?

4           A. Not specifically, no. I mean, some of the  
5 analysis in my report that we have already discussed  
6 could possibly touch on that, but I have not been asked  
7 to, nor do I have a specific opinion on that, more  
8 generally, as you've asked it.

9           Q. Do you agree that firearms with magazines that  
10 accept more than ten rounds of ammunition are  
11 purchased, kept, and used legally by millions of  
12 Americans?

13           A. I don't know.

14           Q. Similar question.

15           Do you agree that millions of law-abiding  
16 Americans own firearms with magazines with more than  
17 ten rounds of ammunition?

18           A. I don't know.

19           Q. Do you have an opinion as to whether the  
20 Supreme Court decision in Bruen was correctly decided?

21           A. I don't have a professional opinion about  
22 that.

23           Q. Do you have a personal opinion about that?

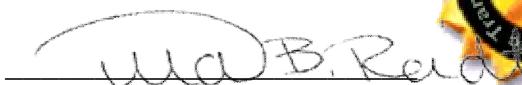
24           A. It personally doesn't -- I don't understand  
25 the legal -- I do not understand how it makes sense

Page 72

1 C E R T I F I C A T E  
2  
3 STATE OF WASHINGTON  
4 COUNTY OF PIERCE  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I, Tia Reidt, a Certified Court Reporter in and for the State of Washington, do hereby certify that the foregoing transcript of the deposition of LUCY P. ALLEN, having been duly sworn, on April 4, 2023, is true and accurate to the best of my knowledge, skill and ability. Reading and signing was requested pursuant to FRCP Rule 30(e).

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 10th day of April, 2023.

/S/ Tia B. Reidt  
Tia B. Reidt,  
NOTARY PUBLIC, State of  
Washington.  
My commission expires  
5/15/2026.